

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ALVIN PARKER,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-08-114-D
)	
WALTER DINWIDDIE, Warden,)	
)	
Respondent.)	

ORDER

Petitioner, a prisoner appearing *pro se*, has filed a Notice of Appeal [Doc. No. 19] and an Application for Certificate of Appealability [Doc. No. 21] to appeal the dismissal of his Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus, construed as a petition under 28 U.S.C. § 2241.¹ *See* 28 U.S.C. §2253(c)(1)(A); *see also Davis v. Roberts*, 425 F.3d 830, 833 (10th Cir. 2005) (statute applies to petitions under § 2254 and § 2241).

Petitioner is entitled to a certificate of appealability (“COA”) only upon making a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. §2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see Slack v. McDaniel*, 529 U.S. 473, 484 (2000). This determination “requires an overview of the claims in the habeas petition and a general assessment of their merits.” *Miller-El*, 537 U.S. at 336. Petitioner need not prove the merits of his case, but he must demonstrate “something more than the

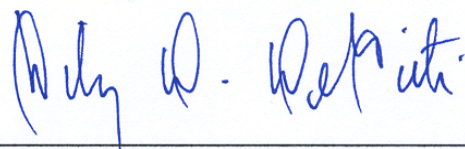
¹ The Notice of Appeal refers to the Order of June 3, 2008, denying a motion pursuant to Fed. R. Civ. P. 59(e) to alter or amend the Judgment.

absence of frivolity or the existence of mere good faith” on his part. *Id.* at 338. (quotations omitted). Where a habeas petition is denied on procedural grounds without reaching the underlying constitutional claim, a COA may issue only if the petitioner shows both (1) reasonable jurists would find it debatable whether the petition states a valid claim of the denial of the constitutional right, and (2) reasonable jurists would find it debatable whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484.

Petitioner argues in support of his Application why each constitutional claim alleged in his Petition deserves consideration by the court of appeals and why he should have been permitted to add a supplemental claim by filing an amended pleading.² Upon careful review of the issues and arguments presented, the Court finds that Petitioner has not made the requisite showing and his request for a COA should be denied.

IT IS THEREFORE ORDERED that the Application for a Certificate of Appealability [Doc. No. 21] is DENIED.

IT IS SO ORDERED this 2nd day of July, 2008.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE

² The record does not reflect, however, that Petitioner has taken an appeal from the latter ruling, which was made by Order of June 5, 2008.